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Application Ser. No. 10/814,098
Attorney Docket No. 4740-299
Client Ref. No. P18202-US2**REMARKS**

The final office action (Office Action) of June 20, 2007, reiterates claim rejections made in an earlier office action of December 27, 2006. The Examiner states that Applicant's arguments in a March 27, 2007 response were "fully considered but they are not persuasive." However, it appears that Applicant's previous arguments were not in fact fully considered. Rather, the present Office Action's response to those arguments focuses entirely on the meaning of the term "broadcast services." The Examiner's response ignores the fact that the claim rejections, now twice repeated, are legally insufficient even if the Examiner's overbroad construction of the term "broadcast services" is adopted.

Broadcast services

As noted in Applicant's response of March 27, 2007, all of the rejected claims include limitations directed to the providing of "broadcast services" to one or more mobile stations. Contrary to the Examiner's assertion, Applicant does not "define" the term "broadcast services" to mean the "Broadcast-MultiCast Services" discussed in the present application. Rather, the application describes a number of "broadcast/multicast services", abbreviated as "BCMCS", that may be provided by a wireless network, including live broadcasts of sporting or news events, or videoconferencing. See Application, p. 1, lines 16-21; p. 3, lines 20-21; p. 5, lines 9-13. As the specification points out, BCMCS provide the ability to transmit the same information stream to multiple users simultaneously. As evidenced by the title and contents of the 3GPP2 specification titled *CDMA High Rate Broadcast-Multicast Packet Data Air Interface Specification*, referenced by and incorporated into the present application, Applicant's use of the term "broadcast stream" is completely consistent with industry usage and understanding.

The Office Action alleges that U.S. Patent No. 6,853,675 (Oleynik) "teaches a method of providing broadcast services in a wireless communication network." Applicant maintains its

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previously presented arguments that despite Oleynik's occasional use of the term "broadcast", Oleynik in fact has nothing to do with broadcast services or broadcast streams. Indeed, the terms "broadcast service" and "broadcast stream", which are limitations of each of the presently rejected claims, are never used in Oleynik. Instead, Oleynik uses the term "broadcast" in one of its senses, to refer to the simple act of transmitting a radio signal outward from an antenna.

In contrast, in the present application the terms "broadcast service" and "broadcast stream" are used, in a manner completely consistent with present usage in the art, to refer to services and streams that are intended for and/or utilized simultaneously by multiple users. Indeed, "broadcast," in the telecommunications and data communications arts, typically refers to the transmission of information to multiple users or devices simultaneously. For example, in the Internet Protocol domain, a "broadcast address" refers to an address allowing a packet to be sent to all machines on a given subnet. In the wireless communications domain, where traditional voice and messaging services have been based on "unicast" models, i.e. transmissions from a base station to a single user terminal, the plain and ordinary meaning of "broadcast services" is the one referenced in the present application – a service in which the same information stream may be provided to multiple users simultaneously.

Applicant's reference to the specification is not an attempt to import limitations into the claims. As the Federal Circuit made clear in *Phillips*, "the 'ordinary meaning' of a claim term is its meaning to the artisan after reading the entire patent." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1321, 75 USPQ2d 1321, 1332 (Fed. Cir. 2005) (en banc). Although *Phillips* also warns against giving dictionary definitions too much prominence, see *id.*, it is worth noting that the Wiley Electrical and Electronics Engineering Dictionary (IEEE Press, 2004) provides the following definition:

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broadcast 1. An RF transmission intended for public or general reception. Also, to transmit such signals. Refers especially to radio and TV programming.
2. In a communications network, the simultaneous transmission of a single message to multiple recipients. Also, to transmit such messages.

(Emphasis added). A reader of ordinary skill in the art would be familiar with the range of definitions for the term "broadcast", and would undoubtedly understand the application of this term in a patent claim that on its face is directed to providing broadcast services in a *wireless communication network*.

§ 102 rejections

Claim 1 is the independent parent of pending dependent pending claims 17-25. Likewise, pending dependent claims 41-47 depend on independent claim 26. Claims 1 and 26 have been twice rejected as allegedly anticipated by Oleynik.

Even if it is accepted that Oleynik is directed to the provision of "broadcast services," Oleynik nevertheless fails to disclose several limitations of independent claims 1 and 26. In particular, Oleynik does not disclose "monitoring utilization of forward link air interface resources," "dynamically adjusting the forward link air interface resources allocated to the broadcast stream responsive to changes in the utilization of forward link air interface resources," or "scaling the quality of the broadcast stream," as recited in claim 1. Nor does Oleynik disclose a "resource manager to monitor utilization of forward link air interface resources and to dynamically adjust the forward link air interface resources allocated to a broadcast stream" or "a stream manager to scale the quality of the broadcast stream," as recited in claim 26.

The Office Action alleges that "monitoring utilization of forward link air interface resources" is disclosed by Oleynik's mention of "the calculated ratio of instantaneous signal power to the minimum instantaneous acceptable signal power," Oleynik col. 15, lines 478-48. Although this power ratio calculation is related to a forward link, this discussion has nothing to do with monitoring utilization of forward link air interface resources. The claim limitation is

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clearly directed to the monitoring of how link resources are being used. A signal power level measurement provides information about the presence or amplitude of a forward link signal, but says nothing about how or even whether the forward link resources are being used. Oleynik thus does not disclose the monitoring of utilization of forward link air interface resources.

The Office Action alleges that "dynamically adjusting the forward link air interface resources allocated to the broadcast stream" is disclosed in Oleynik's discussion of adjusting transmission signal power from one transmission to the next. See Oleynik col. 15, 52-53. The Examiner is completely ignoring the term "allocated." The limitation in claim 1 is directed to adjusting an allocation, or apportioning, of resources to the broadcast stream. Oleynik's power control mechanism does not allocate forward link air interface resources.

The Office Action next alleges that "scaling the quality of the broadcast stream" can also be equated to Oleynik's adjustment of transmit power level. The Examiner's assertion that Oleynik's adjustment of transmit power level both "allocates air interface resources" to a broadcast stream and "scales the quality" of the broadcast stream at the same time is completely unsupported by anything in the cited reference. Oleynik only uses the term "quality" once, to refer to a completely unrelated issue (the apparent randomness, or "quality" of a pseudo-random spreading code), and never suggests that anything is "scaled." Furthermore, claim 1 states that the quality of the broadcast stream is scaled "responsive to adjustments to the allocated forward link air interface resources," while the Office Action asserts that Oleynik's power adjustment both adjusts the allocated resources and scales the quality of the broadcast stream. This makes no sense. Oleynik's power adjustment cannot be responsive to itself.

Incredibly, the Office Action uses the same operation, the adjustment of transmission power level (as described in Oleynik col. 17, lines 3-4), to supply yet another limitation in claim 26. The Office Action alleges that Oleynik, in discussing adjustment of a transmit power level, teaches "adapting the content of the broadcast stream." This is simply wrong. No practitioner

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could possibly understand Oleynik's power level adjustment to provide an adapting of a broadcast stream's content.

Conclusion

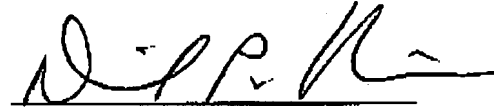
For the above reasons, the rejections of claims 1 and 25 fail as a matter of law, and should be withdrawn. For the same or similar reasons, the rejections of claim 26 also fail, and should be withdrawn. The remaining obviousness rejections are all based on the use of Oleynik as the primary reference, and fail for the same reasons given above.

Applicant maintains the arguments previously presented in the response of March 27, 2007. Furthermore, Applicant points out that even if Examiner's improper constructions of the terms "broadcast service" and "broadcast stream" are accepted, the rejections based on Oleynik fail, as Oleynik fails to disclose several limitations recited in each of the rejected claims.

Accordingly, Applicant believes that all of the elected claims are in condition for immediate allowance. Applicant further submits that all of the claims identified as generic by the Patent Office are allowable over the cited art, for the reasons given herein and in previous responses. Applicant thus respectfully requests reconsideration and allowance of the pending claims, and looks forward to the Office's next correspondence.

Respectfully submitted,

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